

US EPA ARCHIVE DOCUMENT

EPA Draft Agency-wide 2000 Public Involvement Policy

Introduction

This Draft 2000 Public Involvement Policy (hereinafter called the Draft Policy) addresses public involvement in all of the Environmental Protection Agency's (EPA) decision-making, rulemaking, and program implementation activities. The fundamental premise of this Draft Policy is that, in all its programs, EPA should provide for meaningful public involvement. This requires that everyone at EPA remain open to receive all points of view and extend every effort to solicit input from those who will be affected by decisions. This openness to the public furthers our mission to protect public health and safeguard the natural environment by increasing our credibility, improving our decision-making and developing broad support for Agency initiatives. Our willingness to remain open to new ideas from our constituents, and to incorporate them where appropriate, is absolutely essential to the execution of our mission. At the same time, we should not accord privileged status to any special interest, nor accept any recommendation or proposal without careful, critical examination.

Definitions

The term *the public* is used in the Draft Policy in the broadest sense, meaning the general population of the United States. Many segments of "the public" may have a particular interest or may be affected by Agency programs and decisions. In addition to private individuals, "the public" includes, but is not limited to, representatives of consumer, environmental and other advocacy groups; environmental justice groups; indigenous people; minority and ethnic groups; elected and appointed public officials; the media; business and industrial interests; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional representatives and societies; civic and community associations; faith-based organizations; research, university, education, and governmental organizations and associations, and governments and agencies at all levels. Public agencies that serve as co-regulators may have a dual role; they can be beneficiaries of public involvement in their decision-making processes as well as stakeholders who provide input into EPA's decisions.

The term *public involvement* is used in this document to encompass the full range of actions and processes that EPA uses to engage the public in the Agency's work, and means that the Agency considers public concerns, values, and preferences when making decisions. Public involvement enables the public to work with the Agency and hold it accountable for its decisions. Though every person living in the United States is an ultimate beneficiary of EPA actions to protect public health and the environment, a relatively small number of individuals directly participate in Agency activities. Individuals and organizations who have a strong interest in the Agency's work and policies are referred to as *stakeholders*. Stakeholders also may interact with EPA on behalf of another person or group that seeks to influence the Agency's future direction. Some stakeholders are, or believe they are, *affected parties*, that is, individuals or groups who will be impacted by EPA policies or decisions.

What are the purposes, goals and objectives of this Draft Policy?

The purposes of this Draft Policy are to:

- reaffirm EPA's commitment to early and meaningful public involvement;
- ensure that environmental decisions are made with an understanding of the interests and concerns of affected people and entities;
- promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunity for public involvement in Agency decisions; and
- establish clear and effective procedures for conducting public involvement activities in EPA's decision-making processes.

Implementing a strong policy and consistent procedures will make it easier for the public to become involved and to affect the Agency's decisions. This in turn will assist the EPA in carrying out its mission by providing the Agency with a better understanding of the public's viewpoints, concerns, and preferences. Full implementation of this Draft Policy also should build public trust and make the Agency's decisions more likely to be accepted and implemented by those who are most concerned with and affected by them. Finally, implementing this policy will support EPA in meeting statutory requirements regarding public participation, particularly in environmental permitting programs and enforcement activities.

Decision makers are sometimes concerned about delays associated with public involvement. In some circumstances, a compelling need for immediate action may make it appropriate to limit public involvement. However, issues that are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. Achievement of EPA's public involvement objectives may reduce delays caused by litigation or other adversarial activities.

EPA has the following goals for public involvement processes:

- To foster a spirit of mutual trust, confidence, and openness between the Agency and the public;
- To fulfill legal requirements imposed by various environmental statutes;
- To ensure that the Agency consults with interested or affected segments of the public and takes public viewpoints into consideration when making decisions;
- To ensure that the Agency provides the public with information at a time and in a form that it needs to participate in a meaningful way;
- To ensure that the public understands official programs and the implications of potential alternative courses of action;
- To learn from the public the information it is uniquely able to provide (community values, concerns, practices, local norms, and relevant history, such as locations of past contaminant sources, etc.);
- To solicit assistance from the public in understanding potential consequences of technical

issues, identifying alternatives to be studied, and selecting among the alternatives considered;

- To keep the public informed about significant issues and changes in proposed programs or projects;
- To foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties;
- To ensure that the government understands public goals and concerns, and is responsive to them;
- To anticipate conflicts and encourage early discussions of differences among affected parties;
- To promote the public's involvement in implementing environmental protection laws; and
- To ensure that the Agency communicates to the public how its input affected the Agency's decision.

To achieve the purposes and goals, while also recognizing resource constraints, Agency officials will strive to provide for, encourage, and assist public involvement in the following ways:

- Beginning public involvement early in the decision-making process and continuing it throughout the process as necessary to provide the best information possible;
- Striving to identify, communicate with and listen to all affected sectors of the public. The role of Agency officials is to plan and conduct public involvement activities that provide equal opportunity for all individuals and groups to be heard. Where appropriate, implementation of this Draft Policy will require Agency officials to give extra encouragement and consider providing assistance to some sectors, such as minorities and low-income populations, which may have fewer opportunities or resources to participate;
- Involving members of the public in developing options and alternatives (when possible) and, before making decisions, seeking the public's opinion on options or alternatives. Agency officials must avoid advocacy and pre-commitment to any particular alternative or option prior to decision-making, unless statutory or regulatory requirements dictate otherwise (e.g. when EPA proposes a Plan for a Superfund site);
- Actively developing options that address the conflicts in underlying issues expressed by disagreeing stakeholders, thereby seeking to facilitate discussion; and
- Making every effort to match the design of public involvement programs with the complexity and potential for controversy surrounding the issue being addressed, the segments of the public affected, the time frame for decision-making, and the overall

desired outcome of the public involvement process.

When does this Draft Policy apply?

This Draft Policy applies to all EPA programs conducted under the laws and Executive Orders that EPA implements. Appendix 1 contains a list of these laws and orders.

The activities covered by this Draft Policy include:

- EPA rulemaking, when the regulations are classified as significant (under the terms of Executive Order 12866);
- The issuance or significant modification of permits or licenses;
- EPA activities in support of programs that are authorized, approved, or delegated by EPA that are funded by EPA financial assistance (grants and cooperative agreements) to States, tribes, interstate agencies, intertribal consortia, and local governments;
- Selection of plans for cleanup, remediation, or restoration of hazardous waste sites, or Brownfields properties;
- The process leading to a determination of approval of state, tribal or local government administration of a program;
- All other policy decisions that are determined by the Administrator, Deputy Administrator, or appropriate Assistant, Regional, or Associate Administrator to warrant application of the Draft Policy in view of EPA's responsibility to involve the public in important decisions. [Note: Science-based decisions prompt application of the Agency's policy on peer review.]

Many of the activities covered by this Draft Policy have their own public involvement requirements established by statute, rule, or Executive Order. Those provisions should be considered the minimum level of public involvement that EPA will provide. This Draft Policy should be used to determine the appropriate nature and extent of public involvement above the basic requirements. While it is important for the Agency to consider the interests of the public and take steps to effectively involve the communities or constituencies that will be most impacted by EPA's decisions, it is not necessary to have extensive involvement for all public participation or stakeholder involvement activities. However, lack of adequate participation or lack of effective means for participation can result in agreements or policies that do not necessarily reflect the interests of communities or constituencies that will be most impacted by them.

Major national rules and policy decisions will generally involve the most extensive public involvement, but more localized decisions such as individual permits and cleanups sometimes engender a high degree of public interest and warrant a more extensive involvement process as well. This Draft Policy does not limit the degree of public involvement provided, or preclude developing new tools for

public involvement.

This Draft Policy relies heavily on the sound use of discretion by Agency officials, although always with a bias in favor of public involvement. The Agency should make all reasonable efforts to ensure that the public is informed and given appropriate opportunities for involvement. Those opportunities should not be judged solely by their quantity; but also by whether they are designed to improve the quality of EPA's decisions. The Agency will always provide opportunity for public involvement in rulemaking that requires public notice and comment, but not every document or decision requires public involvement. Every involvement opportunity does not call for the inclusion of all potentially interested persons; including legitimate representatives of the various interests may be sufficient. Agency officials must have the flexibility to determine appropriate public involvement, and will be accountable for those decisions. Agency officials must recognize that agreement among all parties, while valuable, is not always needed, and that the Agency must retain the discretion to make decisions or take actions to preserve and protect the environment and public health.

The Draft Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA or any other agency. It is, however, EPA's statement of its strong commitment to full and meaningful public involvement in Agency activities. As a policy, the Draft Policy is not binding upon states, tribes and local governments that implement federally delegated, authorized or approved programs. However, EPA encourages those entities to adopt similar policies and will discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs.

What should EPA do to ensure full and meaningful public involvement?

Each Assistant Administrator, Associate Administrator, Office Director, or Regional Administrator should ensure that the Agency fully carries out this Draft Policy and all public involvement provisions of the laws that they are responsible for implementing. They should ensure that, to the greatest extent possible, authorized and delegated program partners provide opportunities for the public to participate in decision-making related to implementing their EPA-related programs. EPA officials are responsible for determining forthcoming decisions or activities to which this Draft Policy and applicable laws and Executive Orders should be applied, and taking the steps needed to ensure that adequate public involvement processes are developed and implemented.

This Draft Policy identifies six key functions that should be considered when planning for public involvement. Agency officials must exercise judgment and take into consideration the particular circumstances of each situation in determining how those functions will be carried out. Agency employees should strive to provide the most meaningful public involvement opportunities appropriate to each situation. The issues, locations, potential environmental and public health consequences of the activities, potential for controversy, specific needs of the public and the Agency, and other circumstances will influence the design of public involvement processes. The Draft Policy recognizes the Agency's need to set priorities for its use of resources. It also emphasizes involvement by the public in decisions where options are available and alternatives must be weighed, or where EPA is seeking substantial agreement from the public to carry out a program.

The six basic functions for effective public involvement in any decision or activity are:

1. Plan and budget for public involvement activities;
2. Identify the interested and affected public;
3. Consider providing technical or financial assistance to the public to facilitate involvement;
4. Provide information and outreach to the public;
5. Conduct public consultation and involvement activities;
6. Assimilate information and provide feedback to the public.

The goals(s) and recommended actions for each of these functions are described below.

4. *Plan and budget for public involvement activities*

Goal: To ensure effective public involvement processes through advance planning, early notice to stakeholders, adequate time and resources, and evaluation.

a. *Recommended actions:* When preparing budgetary documents for programs affecting the public, Agency officials should include resources for conducting and evaluating public involvement activities. These may be included as an element of regulatory development plans, analytic blueprints, program plans, or EPA's plans for complying with the Government Performance and Results Act. Programs also should plan for complying with the Unfunded Mandates Reform Act, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, Executive Order 13132 (Federalism), and Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments).

Such planning documents should set forth, at a minimum:

- Key decisions subject to public involvement;
- Staff contacts and budget resources to be allocated to public involvement;
- Segments of the public targeted for involvement and plans for identifying organizations and individuals, consistent with the Paperwork Reduction Act if the plans involve the collection of information;
- Proposed schedule for public involvement activities consistent with the Federal Advisory Committee Act;
- Mechanisms to apply the six basic functions – Planning and Budgeting, Identification, Providing Assistance, Information and Outreach, Public Consultation and Involvement, and Assimilation and Feedback – outlined above; and
- Measures or methods to evaluate the effectiveness of public involvement.

When identified in an approved grant work plan, grant funds may be used, subject to any statutory or regulatory limitations, to support reasonable costs of public involvement incurred by assisted agencies, including advisory group expenses.

Assistant Administrators, Associate Administrators and Regional Administrators should ensure that program and activity planning documents include public involvement activities and that they are developed in a timely manner for use in the annual budget planning process.

2. *Identify the interested and affected public*

Goal: To identify groups or members of the public who may have expressed an interest in, or may be affected by the nature of their location, purposes or activities or have an interest in an upcoming activity or action.

a. *Recommended actions:* The responsible official should develop a contact list for each program, activity or project, and add to the list those members of the public who request to be added. Each list should be updated frequently, and will be most useful if subdivided by category of interest or geographic area. The nature and intensity of the involvement activities will drive the updating frequency. Pro-active efforts should be made to ensure that all points of view are represented on the lists. The contact lists should be used to send announcements of involvement opportunities; notices of meetings, hearings, field trips, and other events; notices of available information, reports and documents; and to identify members of the public who may be considered for advisory group membership and other activities. Where circumstances ("lesser actions" such as minor program guidance or minor amendments to a permit) do not warrant identifying individual interested parties to this extent, Agency officials should, at a minimum, be aware of who the interested parties are and how best to provide them notice.

b. *Methods:* Construction of this list of contacts may be accomplished by any number of activities, including, but not limited to the following [Note: Where the above activities involve the collection of information from non-agency parties, they may be subject to the Paperwork Reduction Act (PRA). For advice, staff should consult with the Office of General Counsel]:

- requesting the names of interested and affected individuals from others in the Agency; from facilities/companies; state, tribal, regional and local governments; or from key non-governmental for-profit and not-for-profit groups;
- using questionnaires or surveys to find out levels of awareness;
- reviewing dockets, depositories, research papers or other publications for previous similar or related activities;
- including an EPA point of contact on EPA documents (fact sheets, public notices, sign-up sheets at meetings, etc.) so that individuals may ask to be placed on lists;
- soliciting interest through notices in the Federal Register; trade and trade association publications; local print, radio, cable and television outlets; not-for-profit secular and religious publications; or through the Internet or other electronic means;
- asking those who attend events what, if any, interests or key individuals are missing; and
- by using other comprehensive or creative means that consider the community structure, languages spoken, local communications preferences and the locations (such as libraries and other centers) where the community regularly congregates.

3. *Consider providing technical or financial assistance to the public to facilitate involvement.*

Goal: To assist stakeholder groups and members of the public who may not have resources to obtain the technical assistance or funding that would enable them to contribute effectively and in a timely manner.

a. Recommended actions: EPA recognizes that responsible involvement by the various elements of the public in some of the highly technical and complex issues addressed by the Agency requires substantial commitments of time, study, research, analysis, and discussion. Where it is possible to provide technical or financial assistance, doing so can improve the quality of public involvement.

In some circumstances, direct financial assistance may be available. For example, depending on annual budget authorizations, Assistant and Associate Administrators, Regional Administrators and Office Directors may have authority to provide funds to outside organizations and individuals for public involvement activities associated with rules under development that they, as EPA managers, deem appropriate and essential for achieving program goals. However, funds for such purposes are generally very limited. When funding is provided, the primary purpose must be consistent with the Federal Grant and Cooperative Agreement Act, and appropriate authority for the funded activities must be provided in one or more of EPA's organic statutes. In other cases, assistance in forms other than direct financial support can be provided. Examples of such assistance are provided below.

b. Methods: There are numerous ways to provide assistance to members of the public who lack the ability to participate in an effective or timely manner in Agency public consultation or involvement activities. Agency managers should consult with knowledgeable staff to determine the most feasible and legal methods to follow. Methods may include staff resources or funding for:

- Access to Agency experts or contractors to obtain information and analyses as resources allow;
- Access to technical personnel through grants to universities (e.g.: The Superfund Program's Technical Outreach Services to Communities project has provided independent university-based scientific and engineering expertise to 115 communities dealing with hazardous substance contamination questions);
- Travel and per diem to consult and provide advice directly to Agency officials;
- Compensation for time spent on Federal Advisory Committee meetings;
- Technical Assistance Grants (TAGs) under Section 117 of CERCLA awarded to groups of individuals who may be affected by a release or a threatened release at Superfund sites to obtain assistance in interpreting and disseminating data and information related to site activities;
- Task-specific technical assistance to help stakeholders address issues either in project negotiation or implementation phases of XL (Excellence and Leadership) projects;
- Collection and dissemination of information on outside sources of funding or technical assistance;
- Collaboration with non-governmental organizations and other information brokers;
- Provision of surplus computer equipment to parties who need access to the Internet, following Agency requirements for this activity (under EPA's policy in response to Executive Order 12999 - Educational Technology Ensuring Opportunity for all Children in the Next Century that directs special attention be given to schools and nonprofit organizations, including community based educational organizations located in minority, low-income and underserved communities).

c. Public involvement funding criteria: Currently the Agency does not have Agency-wide

criteria for providing formal assistance to facilitate public involvement. Any criteria that the Agency may develop in the future for the award of financial assistance by the Agency for public involvement should be based on the following criteria:

- (1) whether the proposed activity is allowable under applicable statutory authority;
- (2) whether the activity proposed will involve interests not adequately represented;
- (3) whether the applicant does not otherwise have adequate resources to participate;
- (4) whether the applicant is qualified to accomplish the work;
- (5) whether the proposed activity will be undertaken by those with a direct and genuine stake in the local community; and,
- (6) whether the activity proposed will further the objectives of this Draft Policy that benefit the public.

These criteria should be the primary tests used for public involvement financial assistance. From among those who meet these tests, the Agency would make special efforts to provide assistance to groups that may have fewer opportunities or insufficient resources to participate.

4, *Provide information and outreach to the public.*

Goals: To provide the public with accurate, understandable, pertinent and timely information in accessible places so that the public can contribute effectively to Agency program decisions. To ensure that the public understands the legal requirements for Agency action and the significance of the related technical data so that the public can provide meaningful comments that assist the Agency in its decision-making.

a. *Recommended actions:* Agency officials should:

- Ensure that adequate, timely information concerning a forthcoming action or decision reaches the public;
- Provide policy, program, and technical information to the affected public and interested parties at the earliest practicable times, to enable those potentially affected or interested persons to make informed and constructive contributions to decision-making;
- Ensure that information is provided at places easily accessible to interested and affected persons and organizations;
- Fully implement the goals of the Agency's Public Access Strategy when released (to provide the public with integrated, online, user-friendly access to environmental data and information) and, to the extent practicable, enable communities, including minority, low-income, and underserved populations, to have access to relevant data and information;
- To the extent practicable, direct that information and educational programs be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge;

- Ensure that informational materials clearly identify the role of the public in the specific decisions to be made;
- Highlight significant issues that will be the subject of decision-making;
- Make special efforts to summarize complex technical materials for the public;
- Write documents in plain language that the public will easily understand; and
- Consider whether EPA should provide documents in languages in addition to English in order to reach the affected public or interested parties.

b. *Methods:* Information and outreach programs require the use of appropriate communication tools, and should be tailored to accommodate the public's level of familiarity with the subject.

The following, among many other approaches, may be used for this purpose:

- (1) publications, fact sheets, technical summaries, bibliographies, resource guides and other printed materials which may be made available through the mail and at information depositories (e.g., EPA regional and field offices, federal depository libraries and local public libraries, and state/tribal/local agencies);
- (2) videos and CD ROMs;
- (3) questionnaires, surveys, and interviews, subject to approval by the Office of Management and Budget under the Paperwork Reduction Act;
- (4) public service announcements and news releases;
- (5) educational publications, programs or activities;
- (6) electronic communications such as Web pages, chat rooms, on-line dialogues, and list servers;
- (7) participation in conferences, workshops, or meetings;
- (8) telephone communications such as hotlines, clearinghouses and toll-free comment lines;
- (9) video conferences and satellite downlinks; and
- (10) participation at public events, such as fairs and festivals.

c. *Content.* Outreach materials may include:

- background information (e.g. statutory basis, rationale, specific goal(s) of involvement activities, or the triggering event of the action);
- a timetable of proposed actions;
- summaries of lengthy documents or technical material if relevant;
- a delineation of issues and the interests that they may affect;
- alternative courses of action or tentative determinations that the Agency may have made;
- information on whether an Environmental Impact Statement or Environmental Assessment is, or will be, available;
- specific encouragement to stimulate active involvement by the public, including describing the nature of its influence, roles, and potential impact on the decisions;
- the name and contact information (address, e-mail address, telephone and telefax

- numbers) to reach an individual for further information;
- whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives; and
- technical evidence and research methodology explained in non-technical language. (Summaries of technical documents should be footnoted to refer to the original data.)

Fact sheets, news releases, summaries, and similar publications in print and on the Internet may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents. When practicable, information should be provided in formats and locations that match the public's needs. Some information (e.g., Confidential Business Information) is not available for public review and the Agency cannot release it.

d. *Notification.* Responsible officials should seek to ensure that parties on the contact list and the media are aware of the outreach materials available and that they have adequate time and opportunity to receive and review the information before any additional public involvement activities are conducted. Notices should include information about the depository (address, hours of operation, etc.) or other information relating to access to all documents referred to in the notice, including the name of a contact person when appropriate.

e. *Timing.* To enable effective and meaningful public involvement, outreach materials that make the public aware of the planned activity and that outline the issue(s) should be distributed as early as such information is available. The more complex the issue and greater the potential for controversy or misunderstanding, the earlier the materials should be distributed. When the Agency holds a formal public comment process, notification should take place as soon as possible when the Agency takes an action to permit the public to obtain and review the materials, and prepare responses in a timely and meaningful way. Minimum public comment periods are often specified in statutes or rules. Generally, materials for public comment should be provided as soon as they are available and should allow for not less than 30 days for the public review and comment (or longer, as specified in program-specific requirements), or 45 days in the case of public hearings.

When unusually complex issues or lengthy documents are presented for public review this period generally should be no less than 60 days. (For Superfund actions, regardless of complexity, the public is provided 30 days to submit comments on proposed remedies. Upon a timely request, the public comment period can be extended by a minimum of 30 additional days.)

f. *Fees for Copying.* Whenever possible, the Agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR Part 2.

g. *Depositories or dockets:* The Agency should provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Suitable locations will depend on the nature of the action; for national rules a single central docket is generally appropriate whereas local repositories may be preferable

when decisions relate to individual facilities or sites. RCRA authorizes EPA to require a facility to set up and maintain a depository. In all other instances, for actions at local facilities or sites, Agency officials should work with community representatives and the facility to determine the most accessible depository site(s) within the community. Consideration should be given to accessibility, travel time, parking, transit, and availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories. Agency officials are encouraged to determine the accessibility to the interested public and feasibility of electronic depositories that take advantage of the Internet to reach directly into homes, libraries and other facilities throughout a community and across the nation. If the public has reasonably convenient, well advertised electronic repositories, this can achieve significantly enhanced accessibility at a very modest cost.

5. *Conduct public consultation and involvement activities.*

Goals: To understand the interests and needs of the affected public. To provide for the exchange of information and views and open exploration of issues, alternatives and consequences between interested and affected members of the public and officials responsible for the forthcoming action or decision.

a. *Recommended actions:* Agency officials should:

- Ensure that public consultation and involvement are preceded by timely outreach activities, including timely distribution of information;
- Notify the public of potential consultation and involvement activities early enough to ensure that the public has adequate time to obtain and evaluate information; conduct any additional data gathering; consult experts and formulate their opinions, options, and suggestions prior to Agency action;
- Conduct public consultation and involvement activities at times and places which, to the maximum extent feasible, facilitate attendance or involvement by the affected public. Whenever possible, public meetings concerning local facilities or sites should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation;
- Identify and select the public consultation or involvement process appropriate to the decision being made, and the time frame and resources available. When possible, consult or involve the affected public in identifying and selecting appropriate public involvement processes. This ensures that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs;
- Provide guidance, resources, training, and professional assistance to Agency staff, interested delegated program partners, and the public to assist them in conducting or participating in public consultation and involvement activities in an effective and credible manner. (EPA invites comment on how best this can be accomplished, particularly with respect to including those from minority, low-income, and other underserved communities);
- Consider the appropriate use of third parties in the development and implementation of programs, projects and activities; and
- Be knowledgeable of and comply with provisions of open meetings laws and regulations,

such as the Federal Advisory Committee Act, whenever they apply to the public involvement process being conducted.

b. *Methods*: Consultation and involvement processes may take a variety of forms, depending upon the issues to be addressed, the timing of the decision-making action, and the needs and resources of the public whose involvement is sought. Public hearings and public meetings are two familiar forms of consultation and often are legally required, but their use should not serve as the only forum for citizen input. When required, public hearings and meetings should be held at the end of a process that has previously given the public more informal and interactive opportunities for becoming informed and involved. Alternative Dispute Resolution (ADR) is another tool that the Agency uses to consider and seek to resolve differences among various stakeholders. ADR is a consensual resolution of disputes and issues in controversy. ADR allows EPA to obtain the services of neutral parties on an expedited basis to manage a public dialogue in which neighbors, business interests, environmental groups, and other interested parties have an opportunity to raise concerns to the parties involved in the enforcement action or other controversy.

EPA and other public agencies employ a wide variety of consultation techniques that can be divided into three categories based upon the outcomes of the process:

- (1) Information Exchange;
- (2) Recommendations; and
- (3) Agreements.

Information exchange involves EPA staff and management sharing data, options, issues and ideas with the public in a way that encourages dialogue. Information exchange activities include workshops, forums, joint fact finding, interactive public meetings, focus groups, surveys (subject to provisions of the Paperwork Reduction Act), roundtables and informal consultation such as meetings with interest groups, attendance at conferences, and other opportunities for informal dialogue. These activities are not meant to reach agreement or consensus on future action. Their purpose is to compile a mutually developed knowledge base of everyone's interests, ideas and needs. Though not a fully interactive method, the notice and comment process also serves as a limited form of information exchange.

Recommendations activities involve a number of stakeholder representatives collaborating with each other and with Agency staff to develop recommendations. The Agency may accord significant deference to the recommendations, but is generally not bound to implement the recommendations, nor are the parties bound to accept them. (See Appendix 2 for FACA requirements.) Examples of recommendations activities include FACA committees established by EPA, external technical committees (such as those conducted with the American Society for Testing and Materials), peer review panels, and various technical advisory groups, citizens advisory groups, or panels.

Agreement activities involve EPA management and representatives of stakeholders who reach an agreement by consensus. Agreement activities include negotiated rulemaking committees and other mediated agreements. If the agreement activity used does not produce a legally binding agreement, the desired outcome of such an activity is a commitment on the part of the participants to full implementation.

The list above is not exhaustive but it indicates the need for program officials to be flexible and

choose the right techniques for the right occasion. These activities are not mutually exclusive; they form a progression. They can and should be used as part of a thorough, well-planned system of consultation and public involvement. Successful agreement or recommendation processes occur only with significant information exchange and outreach. However, progressing to a recommendation process or agreement process is not necessary, practical or affordable in all decision-making processes.

c. *Content* - Agency officials should clearly identify issues to be discussed, negotiated or decided prior to and throughout the engagement process so that the public understands which decisions are subject to its input. The type of process to be conducted, the schedule, and the assumptions and expectations for the outcomes of the process also should be clearly stated so that the public and its representatives understand whether they are being invited to an information exchange or a negotiation and can set their expectations accordingly. If possible, the public should be involved in determining the design of the processes. The Agency will comply with all applicable open meeting requirements, such as FACA and all information gathering requirements, such as the Paperwork Reduction Act, in the design of its public outreach processes.

d. *Notification* - The Agency should ensure that all parties on the contact list and the media are notified of opportunities to participate and provided with appropriate information. Agency officials should not assume that the general public reads printed legal notices or Federal Register notices which are often required by statute or regulation. Although these methods serve as legal notice to the public, they can be augmented by broader notice to the media or interested persons on the contact list, and other tailored notifications. Notification should give the time, date and location of the consultation process, a general description of the topics or agenda, a contact person and contact information, and a general description of the nature of the process to be conducted, as well as the role of the public. Agency officials should consider the use of multilingual notices of upcoming activities and/or translator services, when appropriate.

e. *Timing* - Agency officials should provide early advance notice of public involvement processes so that the public can obtain background information, obtain and evaluate additional data, formulate their needs and interests, and obtain expert assistance, if necessary. Generally, notice should be given not less than 15 days in advance of an impending meeting or consultation process. If the issues are unusually complex or involve review of lengthy documents this period generally should be no less than 60 days. Program specific notice requirements should be consulted; for example, for Superfund actions, regardless of complexity, the public is provided 30 days to submit comments on proposed remedies. Upon a timely request, the public comment period can be extended by a minimum of 30 additional days.

f. *Summaries*: Detailed summaries of advisory committee meetings under FACA are required by law. [Appendix 2 contains requirements for formation and use of EPA advisory committees.] In addition, some statutes also require minutes of public meetings. Even when not required, when possible and appropriate, Agency officials should make summaries of public hearings and public meetings available to participants and other interested parties. When possible and appropriate, Agency officials should be open to participants' comments that might correct or add to the summary. In rulemaking proceedings under the Administrative Procedure Act, a memorandum summarizing any significant new factual data or information likely to affect the final decision received during an informal meeting or other conversations should be placed in the public docket for the rule. In other situations, it may be helpful to document

discussions that contribute information useful to decision-making and make that information available to participants and interested parties.

6. *Assimilate information and provide feedback to the public.*

Goal: To consistently earn and retain the public's trust and credibility for EPA consultation processes, by evaluating and assimilating public viewpoints and preferences into final decisions, where appropriate and possible, and communicating to the public the decisions made and how their input affected those decisions.

Assimilating public viewpoints and preferences into decisions and final actions involves examining and analyzing public input, considering if and how to incorporate that input into final program decisions, and making or modifying decisions according to carefully considered public views. The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision and discuss the influence of the public's input in the final decision.

a. *Recommended actions:*

(1) Assimilate the information: Agency officials should briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, EISs or other appropriate forms. This should be done at key decision points. Each Responsiveness Summary (or similar document) should:

- include a statement of the action that was taken;
- explain briefly the type of public involvement activity that was conducted;
- identify or summarize those who participated and their affiliation;
- describe the matters on which the public was consulted;
- summarize the public's views, important comments, criticisms and suggestions;
- disclose the Agency's logic in developing decisions;
- indicate the effect the public's comments had on that action; and
- discuss the Agency's specific responses to significant issues, in terms of modifying the proposed action, or explaining why the Agency rejected proposals made by the public.

(2) Provide feedback to the public: For all major actions and whenever practicable for lesser actions, the Agency should provide feedback to participants and interested parties concerning the outcome of the public's involvement. The Agency should publish, post on a web site or in public places, distribute, mail, or e-mail a Responsiveness Summary or similar document for those who participated in or observed the public involvement processes, those who provided public comments and to those on the contact list. In addition, where circumstances and resources permit, or where the number of participants was small, feedback may be in the form of personal letters. Feedback provided in meetings or through other means should be documented.

Who is responsible for ensuring that this Draft Policy is applied appropriately?

Public involvement is an integral part of any program. It should routinely be included in decision-making and not be treated as an independent or secondary function. Managers should ensure that personnel are properly trained, supported and counseled, and that adequate funding needs are incorporated in their specific budgets.

Under the overall direction of the Administrator, the Assistant, Associate, and Regional Administrators are responsible and accountable for the adequacy of public involvement programs. They are ultimately responsible for making certain that, for the activities under their jurisdiction, all Agency staff implement the purpose of this Draft Policy. They are responsible for ensuring that the level of effort in public involvement is commensurate with the potential impact of the upcoming action or decision. The Regional, Assistant, or Associate Administrators will make certain that concerns about the adequacy of public involvement are heard and, where necessary, acted upon as resources allow. Citizens who have questions or objections about the substance of this Draft Policy or the appropriateness of applying it in a particular case should raise that issue with the Agency officials involved.

Although this Draft Policy is not binding on states, tribes and local governments, EPA encourages these entities to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA. The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), and during any other program audit or review.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public involvement activities. Specifically, the Administrator will:
 - a. establish policy direction and guidance for all EPA public involvement programs;
 - b. provide incentives to Agency personnel to ensure commitment to and competence in implementing this Draft policy;
 - c. evaluate the adequacy of public involvement activities conducted under this Draft Policy, the appropriateness and results of public involvement expenditures, and the effectiveness of this Draft Policy; and
 - d. provide transparency by making the Administrator's appointment calendar publicly available through the Office of Communication, Education and Media Relations.
2. *Assistant Administrators and Associate Administrators* have the following responsibilities:
 - a. identify and address those activities and major decisions where application of this Draft Policy is appropriate;
 - b. ensure that plans developed for these programs or activities include and provide adequate time and resources for effective public involvement;
 - c. consider providing guidance and assistance to support regional office public involvement activities at the request of Regional Administrators;
 - d. implement the public information and public involvement portions of approved plans;
 - e. evaluate the effectiveness and appropriateness of public involvement expenditures and activities under their jurisdiction, revising and improving them as necessary;
 - f. encourage coordination of public involvement activities;
 - g. ensure that, as regulations for the programs cited in Appendix 1 of the Draft Policy are amended, they incorporate the Draft Policy's provisions;
 - h. consider funding authorized pilot and/or innovative demonstration projects;
 - i. consider measures to ensure Draft Policy implementation in appropriate managers'

performance standards;

- j. provide financial assistance, as appropriate and available, for authorized public involvement activities at the national level;
- k. coordinate public involvement funding to outside groups to ensure the most economical expenditures;
- l. provide guidance and technical assistance and training as appropriate to support authorized and delegated program activities of state, tribal, regional and local entities;
- m. develop guidance and training needed to ensure that program personnel are equipped to implement the Draft Policy;
- n. provide incentives to Agency staff to ensure commitment to and competence in implementing this Draft Policy;
- o. seek public involvement in decisions to modify or develop major national policies, at their discretion;
- p. ensure that applicable legal requirements associated with public involvement are adhered to, such as the Federal Advisory Committee Act and the Paperwork Reduction Act; and
- q. make appropriate appointment calendars available through the Office of Communication, Education and Media Relations to provide transparency.

3. *Regional Administrators* have the following responsibilities:

- a. identify and address those EPA activities, policies, and programs where this Draft Policy should be applied;
- b. ensure that plans developed by the programs for activities, programs and policies subject to this Draft Policy provide for adequate public involvement;
- c. implement the public information and public involvement portions of approved Agency plans;
- d. provide information and technical assistance to staff and participants in delegated programs on the conduct of public involvement activities;
- e. discuss with state, tribal, regional and local entities the effectiveness and appropriateness of their public involvement activities during periodic meetings;
- f. encourage coordination of public involvement activities;
- g. support and assist the public involvement activities of EPA Headquarters;
- h. ensure that Regional staff members are trained, and that resources are allocated for public involvement;
- i. incorporate measures to ensure Draft Policy implementation in managers' performance standards;
- j. provide small grants to representative public groups for needed public involvement work, where feasible and appropriate;
- k. evaluate the appropriateness of public involvement expenditures and activities, revising and improving them as necessary;
- l. ensure that applicable legal requirements associated with public involvement are adhered to, such as the Federal Advisory Committee Act and the Paperwork Reduction Act; and
- m. provide transparency by making appropriate appointment calendars available through the Regions' public affairs offices.

4. *The Director, Office of Communication, Education, and Media Relations (OCEMR)* has an important role in the development and support of Agency public involvement activities. The Director

will:

- a. assist EPA Headquarters and Regions in identifying interested and affected members of the public;
- b. support Headquarters and Regional programs in critiquing, developing and distributing outreach materials to inform and educate the public about Agency environmental programs and issues, and involvement opportunities;
- c. encourage, develop, and support Agency strategic communications plans to foster public awareness and complement public involvement plans; and
- d. make calendars available consistent with the above provisions.

5. The *Associate Administrator, Office of Congressional and Intergovernmental Relations*, has the responsibility to assist program offices in identifying:

- a. State and local officials, both elected and appointed, to engage in public involvement activities; and,
- b. appropriate mechanisms and forums to reach these constituents.

APPENDIX 1: LAWS, EXECUTIVE ORDERS AND PRESIDENTIAL MEMOS

EPA is required to implement public involvement provisions of laws, executive orders and presidential memos that include, but may not be limited to:

- Clean Air Act, 42 U.S.C. §§ 7401 - 7671q (1994 & Supp. 2000)
- Clean Water Act 33 U.S.C. §§ 1251 - 1387 (1982 & Supp. 2000)
- Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 - 9675 (1994 and Supp. 2000)
- Emergency Planning and Community Right to Know Act 42 U.S.C. §§ 11011 - 11050) . (1994)
- Federal Insecticide, Fungicide and Rodenticide Act, (including the Food Quality Protection Act of 1996), 7 U.S.C. §§ 135 - 136y (1994)
- Marine Protection Research and Sanctuaries Act of 1972 (including the Ocean Dumping Act), 33 U.S.C. §§ 1401 -1445 (1982)
- National Environmental Policy Act of 1969, §§ 42 U.S.C. 4321 - 4347e (1988 & Supp.2000)
- Noise Control Act of 1972, 42 U.S.C. §§ 4901 - 4918 (1995)
- Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 - 6992k (1994 and Supp. 2000)
- Safe Drinking Water Act , 42 U.S.C. §§ 300f - 300j-26 (1988)
- Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2692 (1994 & Supp. 2000)
- Chemical Safety Information, Site Security and Fuels Regulatory Relief Act of 1999, Pub. L. 106-40, 113 Stat. 207 (1999)
- Shore Protection Act 33 U.S.C. §§ 2601 - 2623 (Supp. 2000)

This Draft Policy also applies to EPA activities under the following Executive Orders:

- E.O. 12580 - Superfund Implementation

- E.O. 12856 - Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements
- E.O. 12866 - Regulatory Planning and Review
- E.O. 13132 Federalism (which replaced E.O. 12875 - Enhancing the Intergovernmental Partnerships)
- E.O. 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13045 - Protection of Children from Environmental Health Risks and Safety Risks
- E.O. 13007 Indian Sacred Sites
- E.O. 13175 - Consultation and Coordination with Indian Tribal Governments
- E.O. 11988 - Floodplain Management
- E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency

In addition, this Draft Policy is effective for EPA activities conducted under the following statutes for which other agencies have primary responsibility:

- Atomic Energy Act , 42 U.S.C. §§ 2011 - 2297g-4 (1995)
- Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (codified as amended in scattered sections of 15, 16, 25, 26, 30, 42 and 43 U.S.C.)
- Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 - 397 (1994)
- Intermodal Surface Transportation Efficiency Act , Pub. L. 102-240, 105 Stat. 1914 (codified as amended in scattered sections of 15, 16, 23, 26, and 33 U.S.C.)
- Occupational Safety and Health Act, 29 U.S.C. §§ 651 - 678 (1994 & Supp. 2000)
- Oil Pollution Act of 1990, 33 U.S.C. §§ 2702 - 2761 (Supp. 2000)
- Motor Vehicle Information and Cost Savings Act, 49 U.S.C. §§ 32901 - 32919 (1994 & Supp. 2000)
- Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 -110270 (1994 and Supp.2000)
- Uranium Mill Tailings Radiation Control Act , 42 U.S.C. §§ 7901 - 7942 (1995)
- WIPP Land Withdrawal Act, Pub. L. No. 102-579, 106 Stat. 4777 (1992) as amended by Pub.L. No. 104-201, 110 Stat. 2422

Implementing public involvement activities may also involve complying with the following Acts, Executive Orders, Executive Memoranda, and Regulation:

- Administrative Procedure Act 5 U.S.C. §§ 550 - 596 ((1996)
- Freedom of Information Act 5 U.S.C. § 552 (1994 & Supp. 2000)
- Civil Rights Act of 1964 , Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.)
- Federal Advisory Committee Act 5 U.S.C. app. 2 §§ 1 - 15 (1996)
- Government Performance and Results Act, Pub. L. No. 103-62, 107 Stat. 285 (codified in scattered sections of 31 U.S.C.)
- Negotiated Rulemaking Act 5 U.S.C. §§ 561 -570a
- Administrative Disputes Resolution Act 5 U.S.C. §§ 571-584 (1994)
- Paperwork Reduction Act 44 U.S.C. § 3501 - 3526 (1998 & Supp. 2000)
- Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 5 U.S.C. §§ 601 - 612 (1994 & Supp. 2000)
- Unfunded Mandates Reform Act 2 U.S.C. §§ 1501 - 1571 (1994)

- National Technology Transfer and Advancement Act of 1995, Pub.L. No. 104-113, 110 Stat. 775 (codified as amended in scattered sections of 15 and 35 U.S.C.)
- Congressional Review Act, 5 U.S.C. §§ 801 -1808 (2000)
- National Environmental Education Act of 1990, 20 U.S.C. §§ 5501 - 5510 (1994)
- Organotin Antifouling Paint Control Act, 33 U.S.C. §§ 2401 - 2410 (Supp. 2000)
- National Historic Preservation Act of 1996, as amended, 16 U.S.C. §§ 470 - 470x-6 (Supp. 2000)
- E.O. 12862 - Setting Customer Service Standards
- E.O. 12999 - Educational Technology Ensuring Opportunity for all Children in the Next Century
- E.O. 11593 - Protection of and Enhancement of the Cultural Environment
- E.O. 11990 - Protection of Wetlands
- Presidential Memorandum on Plain Language in Government Writing (June 1, 1998)
- Presidential Memorandum on Electronic Government (December 17, 1999)
- Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994)
- Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act, 40 CFR Part 25 (2000)
- Minority Business Enterprise and Women's Business Enterprise Program, contained in portions of 40 CFR Parts 30, 31, 35 and 40

APPENDIX 2 : ADVISORY COMMITTEES

To gain advice from a representative group of stakeholders or experts, one of the methods that the Agency may choose is forming an advisory committee. These committees are usually subject to the chartering, balanced membership, and open meeting requirements of the Federal Advisory Committee Act (FACA). The Office of General Counsel or the Regional Counsel should be consulted to determine whether FACA applies to a particular group.

In general, any time the Agency forms a group of non-federal people to provide EPA with collective advice, the requirements of the Federal Advisory Committee Act (FACA) may apply. Such groups shall not meet until the requirements of FACA are met. Staff may contact the Committee Management Officer in the Office of Cooperative Environmental Management for advice on complying with these requirements, and to learn about the exceptions to FACA.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues that the decision-making body considers relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, and budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the Agency's action.

A. Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory

group, provisions of the Federal Advisory Committee Act 5, U.S.C. App. 2), and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.

These requirements are:

- The development of a Charter that has been approved by the General Services Administration and Office of Management and Budget. It must contain the committee's objectives and the scope of its activities, the period of time necessary for the committee to carry out its objectives, the agency responsible for providing the necessary support for the committee, and a description of the duties for which the committee is responsible. The Charter must be renewed every two years. 5 U.S.C. App. 2, §9.
- The Establishment Federal Register Notice. At least 15 days before the charter is filed for a new committee, EPA is required to publish an establishment notice in the Federal Register. Such notice describes the nature and purpose of the committee, the agency's plan to attain fairly balanced membership, and a statement that the committee is necessary and in the public interest 5 U.S.C. App. 2, §9.
- Balanced Membership. Advisory committees must be "fairly balanced" in points of view represented. 5 U.S.C. App. 2, §5.
- The Meeting Federal Register Notice. Each advisory committee meeting must be noticed in the Federal Register at least 15 days prior to the meeting. 5 U.S.C. App. 2, §10.
- To close a meeting to the public, you must obtain the approval of both the Administrator and the General Counsel. 5 U.S.C. App. 2, §10.
- Detailed minutes must be kept of all advisory committee meetings. 5 U.S.C. App. 2, §10.
- Open Meetings. Interested persons may file written statements with any advisory committee, attend any advisory committee meeting (unless properly closed), and appear before any advisory committee. 5 U.S.C. App. 2, §10.
- DFO Attendance. Each meeting must be attended by a Designated Federal Official (DFO), a full-time federal employee who is authorized to adjourn the meeting and approve the agenda. 5 U.S.C. App. 2, §10.
- Documents Available to the Public. All advisory committee documents (including drafts) shall be available to the public upon request. 5 U.S.C. App. 2, §10.

B. State and Local Advisory Committees: In instances where regulations, program guidance, or the public involvement plans of state, substate, or local agencies, call for advisory groups, they should follow applicable state and local laws.

